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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,275	01/30/2001	Aaron Strand	8160.16016-CIP DIV	2989

26308 7590 10/02/2002

RYAN KROMHOLZ & MANION, S.C.
POST OFFICE BOX 26618
MILWAUKEE, WI 53226

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

13

DATE MAILED: 10/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC 73

Office Action Summary

Application No.

09/774,275

Applicant(s)

STRAND ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 and 75-145 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-62, 75-145 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

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DETAILED ACTION

Claims 1-62, and 75-145 are currently pending in the application. However, the numbering appears to be erroneous. There are duplicate claims (e.g. 126-145 are the same as 106-125) and claims which depend from cancelled claims. The record shows the following:

Pre-Amendment A (filed January 30, 2001) added claims 1-62 and 75-137, which were the original set of claims pending in the application. The USPTO renumbered the claims 1-125, respectively, as required under 37 CFR 1.126.

Pre-Amendment B (filed January 30, 2001) cancelled claims 63-74.

Pre-Amendment C (filed March 26, 2001) added claims 118-137. The USPTO renumbered the new claims as 126-145, respectively, as required under 37 CFR 1.126.

To clarify the record, it is suggested that applicant cancel *all* pending claims (i.e. 1-62, 75-145) and submit a new set of claims for examination. Any new claims submitted should begin numbering at claim *146* (See 37 CFR 1.126).

It is also suggested that applicant review claim language for possible antecedent issues. For example, pending independent claim 128 recites "web material" and dependent claim 131 recites "said skirt web material", which lacks antecedent basis.

Election/Restrictions

Because of the erroneous numbering of claims, the following restriction requirement does not indicate the claims relevant to each of the distinct inventions.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims drawn to bags with tear area features, classified in class 383, subclass 204.
- II. Claims drawn to a pre-packaged cheese product, classified in class 426, subclass 130.

The inventions are distinct, each from the other because:

Inventions I and II are unrelated . Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Invention II is directed to a cheese product in a bag having lines of weakness and the bag of Invention I has a tear area, which would not require a line of weakness.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


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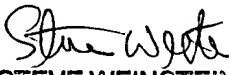
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen 
Examiner
Art Unit 1761
October 1, 2002


STEVE WEINSTEIN
PRIMARY EXAMINER 1761